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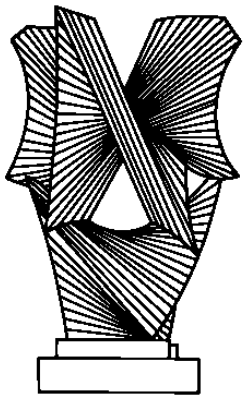

INTRODUCTION, CHAPTER 1 OF *CONSTITUTIONS IN AUTHORITARIAN REGIMES*

Tom Ginsburg and Alberto Simpser

THE LAW SCHOOL
THE UNIVERSITY OF CHICAGO

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Introduction

Constitutions in Authoritarian Regimes

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Tom Ginsburg

Alberto Simpser

An old Soviet joke has it that a man goes into a restaurant and surveys the menu. "I'll have the chicken," he says, only to be told by the waiter that the restaurant is out of chicken. He asks for the beef, only to be told the same thing. Working his way through the menu, he is repeatedly told that the restaurant is out of the selected dish, until he gets upset and says, "I thought this was a menu, not a constitution." The joke captures the usual perception of dictatorial constitutions as meaningless pieces of paper, without any function other than to give the illusion of legitimacy to the regime.

But this view raises a puzzle. Formal written constitutions are ubiquitous features of modern nation-states, and are found as often in autocracies as in democracies. Furthermore, they are costly to adopt, consuming significant political energy and time. Stalin, along with many Soviet elites, played a direct role in drafting the 1936 Constitution and took the process quite seriously (Getty 1991: 22). The seventeen years required to draft the recent constitution of Myanmar may have been exceptional, but there is no doubt that some authoritarians spend political effort on constitution making. Why would they

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bother to do so if the documents are meaningless? The standard answer that the constitution is a legitimating device begs the question: How can an obvious sham document generate any legitimacy?

This volume of essays begins to attack this puzzle. Authoritarian regimes have been the subject of a burgeoning literature in recent years, as scholars have recognized that dictatorship is an internally heterogeneous category (Levitsky and Way 2002; Schedler 2006.). This work has produced a wealth of insights into particular institutions, such as legislatures, courts, and elections; into regime practices such as co-optation and repression; and into nondemocratic sources of accountability. Yet there has, to date, been relatively little work on authoritarian constitutions per se outside of individual country case studies (e.g., Barros 2002). We have very little understanding of the logics and dynamics of constitutional design and practice in countries that have "constitutions without constitutionalism" (Murphy 1993; Okoth-Okendo 1993). Such countries have the form of a constitution, but without fully articulated institutions of limited government. It is our hope that an exploration into constitutions in these countries can not only provide insights into the regime practices of authoritarians but also generate broader insights into the study of constitutions and their functions more generally. The chapters here, which utilize a wide range of methods and focus on a broad set of cases representing many different types of authoritarian regimes, provide a good deal of material for this inquiry.

This introductory chapter advances and unpacks the idea that authoritarian constitutions cannot be dismissed – that they matter. With this goal in mind, we consider three overlapping questions: What do authoritarian constitutions do?

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How do they work? And why are they adopted in the first place? Consider the first question: What are the functions of authoritarian constitutions? In other words, what problems do such constitutions solve? Generic problems of governing seem to be paramount. We devote a section of this introduction to the role of authoritarian constitutions in mitigating such problems, and in incentivizing different parties to do what authoritarian rulers wish them to do.

Three important subcategories of problems include the challenges of coordinating multiple actors, controlling subordinates, and eliciting cooperation from subjects. As the literature has suggested, constitutions can help authoritarian rulers meet these challenges, in some cases by increasing the ruler's control and in others by tying the ruler's hands. Somewhat more generally, as the contributions in this volume suggest, authoritarian constitutions perform a variety of functions that can be grouped into four categories that we designate as operating manual, billboard, blueprint, and window dressing. We devote a section of this chapter to elaborating on these functions.

The claim that authoritarian constitutions matter raises the question of why they are efficacious, and this is the second question we consider in this introduction: If authoritarian rulers are above the law, why and how can constitutions make a difference? We explore several mechanisms. First, authoritarian constitutions can help oligarchic actors to work together by establishing focal points, procedures, and institutions, thereby addressing problems of coordination and problems of commitment. Second, constitutions may have normative properties that confer upon them a certain independent force, even in the context of authoritarian rule. Constitutions may function as "hallowed

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vessels," meaning that their contents, by virtue of being part of a document called the "constitution," enjoy special public visibility and a privileged normative status. Such status, we argue, becomes especially important during moments of intra-elite conflict or of regime crisis. Authoritarian constitutions also influence the contours of permissible and impermissible discourse. Finally, as Albert Hirschman (1986) suggested about the law in general, constitutions can influence the values of citizens over time.

But understanding the functions of authoritarian constitutions and the mechanisms underpinning them does not suffice to explain why such constitutions are written or changed, or to account for the specific provisions that are adopted. Even when constitutional framers are strategic, they are not omniscient. Moreover, even authoritarian constitutions often reflect processes of collective choice among elites with divergent interests. Therefore, despite the fact that authoritarian rulers enjoy more discretion than their democratic counterparts in deciding when and how to draft a constitution, it may be incorrect to assume that authoritarian constitutions reflect optimizing behavior on the part of a unitary ruler. Thus, it is necessary to entertain the possibility that the reasons that constitutions are adopted may frequently differ from the roles that constitutions play, especially over the long run. Why, then, are authoritarian constitutions written? A variety of motivations exist. In some cases, the process of constitution making may be valued in itself, independent of any short-term or long-term consequences that specific constitutional provisions may have. We return to these issues in the penultimate subsection of this chapter. We end the chapter with a

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brief discussion of the lessons about authoritarian constitutions that derive from the chapters of this volume and of directions for further research.

Constitutions as Solutions to Problems of Governing

Constitutions have a wide array of functions, and some of these functions are likely to be shared across both authoritarian and democratic regimes. A very central function of formal rules including constitutions is simple coordination. All regimes need institutions and need to coordinate on what institutions will play what role. Laying out the structures of government facilitates their operation because it prevents continuous renegotiation. A written constitutional text can thus minimize conflict over basic institutions for any regime. Furthermore, we know that certain institutions can facilitate coordination within the core of the governing elite itself. Robert Barros's (2002) study of the Chilean constitution under Augusto Pinochet documents how the constitution, especially the Constitutional Tribunal, facilitated coordination among the various military branches that composed the junta. Coordination, then, is a ubiquitous need of government that can be facilitated by formal written constitutions, facilitating elite cohesion.

Authoritarian constitutions also can facilitate coordination by *democrats* at crucial moments of transition. When Zine el Abidine Ben-Ali of Tunisia fled his country in the Arab Spring of 2011, his prime minister briefly took over as president in defiance of the constitution. After several hours, it was decided that the formal provisions of constitutional succession should be followed, leading to the president of the Chamber of Deputies, Fouad Mebazza, taking office as a caretaker before elections could be organized. This simple coordination function

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can become extremely important at the end of authoritarian regimes, preventing conflict from spiraling out of control over basic institutions.

Other "standard" constitutional functions may also operate in both dictatorships and democracies. We know, for example, that constitutions help address problems of intertemporal credibility by making commitments endure across time. While authoritarians and democrats may differ in the precise character of the commitments they wish to undertake, the basic modality of entrenching certain policies to enhance credibility may be useful to all leaders. Military authoritarians, in particular, may use the opportunity of a constitution to set a timeline for a return to civilian rule, as well as the terms under which such a return may take place. Announcing such a project will raise the costs of violating the text of the constitution, and may also facilitate a period of "legitimate" authoritarian rule.

Constitutions may also be useful to set up institutions to control lower-level agents. All regimes need mechanisms to control agents, and the problem of gathering information on the activities of agents is an enduring one. There are many standard solutions to the problem: hiring a second agent to monitor the first (or otherwise improving detection and increasing punishment), selecting agents for loyalty and affinity, structuring systems of hierarchical appeal to higher-level agents, and creating a powerful ideology that is internalized by the agents themselves so that they self-monitor. Historical examples of government solutions to the agency problem include the imperial Chinese institution of the censorate, a separate branch of government to monitor the bureaucracy. This solution, however, creates the standard problem of "who guards the guardians?." Imperial

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China was also an early pioneer in the hierarchical approach to the agency problem, utilizing what eventually became known as a Weberian bureaucracy with higher levels supervising those lower down. Weber celebrated it as the most technically efficient of government structures, but it is costly and creates its own problems of information flow. It also requires careful ex ante screening of potential agents to ensure loyalty. Ideology is another tool to enhance loyalty, and it is favored by some mass political parties and religious institutions such as the Catholic Church. It is difficult to sustain, though very effective when it is in high operation.

Jean Bodin, in *The Six Books of the Republic* (1576), was one of the first to explore how constitutions can help to resolve principal–agent problems via institutional design. Bodin notes that the French king adopted a solution of parliamentary immunity to help generate information about lower-level agents. The parliamentary representatives had an absolute right to bring complaints about provincial agents of the king without fear of punishment. This was central to generating important information to provide more effective monarchical governance, a kind of early version of the "fire alarm" model of administrative law (McNollGast 1989; Root 1989).

Constitutional solutions to the agency problems also include institutions whereby a ruler ties his own hands. Doing so can be a means for enabling the powerful to enter into credible commitments (e.g., Root 1989). Roger Myerson's work is also important in understanding the emergence of constitutionalism generally and the utility of constitutional logic to authoritarians. In his study of the foundations of the constitutional state, Myerson provides a model in which, in

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equilibrium, it is in the autocrat's interest to create a court of notables with the ability to remove him from power. "Without such an institutionalized check on the leader," Myerson writes, "he could not credibly raise the support he needs to compete for power" (2008a: 130). In a related model, Myerson (2008b) focuses on the agency problem facing powerful rulers. In the model, a prince faces the possibility that his agents, the governors, could be corrupt or rebel against him. To prevent this, the prince must credibly assure governors that he will not unfairly cheat them. Myerson suggests that the prince can attain this goal by punishing a governor only after a trial and by inviting other governors to observe all trials. Under this arrangement, should the prince cheat a governor, the others would lose faith in the prince (Myerson 2008b: 18). As Myerson observes, the early kings of England needed mechanisms to ensure that taxes were collected and that agents were properly motivated to do so. But agents would not be thus motivated unless they could trust that the king would refrain from arbitrary punishment. The Court of the Exchequer, in Myerson's account, provides a constitutional solution to the problem. In the Exchequer, a panel of leading figures of the realm witnessed legal and financial transactions between the king's Treasurer and the sheriffs who governed the provinces of England in the king's name. Thus the Exchequer established common knowledge among the agents of the king about any question of whether a provincial sheriff might deserve punishment. Common knowledge and the constitutional commitment by the king to punish only those agents whose malfeasance was publicly verified helped to assure appropriate incentives for the king's principal agents and thus made government more effective. This simple

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constitutional setup solved agency and commitment problems on the part of the monarch.

James Fearon's work (2011) points to another way in which constitutions might be beneficial to autocrats. Autocrats face the problem that the public cannot trust them to refrain from shirking or stealing, and therefore will periodically choose to rebel against the ruler. One way to address this problem is to adopt a constitution that provides for fair elections to be held regularly. Because the results of such elections aggregate and make public the citizens' private information about the ruler's performance, they make it possible for the ruler to be rewarded by the citizenry for governing well.[1] This model again elaborates the common need for regimes – both democratic and autocratic – to facilitate information flows.

Operating Manuals, Billboards, Blueprints, and Window Dressing

Coordination, precommitment, and agency control are all essential governmental functions that can be played by various institutions, but constitutions are particularly good solutions that have become standard in the modern era. When a written constitution describes actual political practice, it is serving as what Adam Przeworski in his essay here (see Chapter 2) characterizes as an *operating manual.* The constitutional text describes how government is to function, allowing various players to cooperate by following its instructions. Przeworski's particular puzzle is why the 1952 Polish constitution, framed at the apex of Communist power in Poland, accorded de jure authority to the government and not to the Communist Party. Przeworski shows that, in so doing, the Communist

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Party framers chose to "rule against rules," creating unnecessary difficulties for themselves. Przeworski's discussion suggests that, in their role as operating manuals, constitutions provide some genuine constraints on leaders. Consistent with this, Jennifer Gandhi's essay (Chapter 9) argues that authoritarian constitutions influence possibilities, in electoral authoritarian regimes, for opposition parties to join efforts in order to beat an autocrat at the polls. Opposition parties, she argues, will enter into a coalition with each other insofar as they can trust that, should their coalition win the election, whichever party is installed in the presidency will honor its promises to the other coalition partners. Gandhi's key point is that constitutions determine the degree and kind of power associated with control of the presidency. The greater the power of the presidency as set out in the constitution, the less credible it is, ex ante, that promises to coalition partners who do not control the presidency will be fulfilled in the future.

Beyond serving as operating manuals, constitutions can play several other roles that we characterize as *billboards, blueprints,* and *window dressing.*[2] The *billboard* role is common to both dictatorships and democracies.[3] Constitutions are advertisements; they seek to provide information to potential and actual users of their provisions. As authoritative statements of policy, constitutions can also play a role in signaling the intentions of leaders within the regime to those outside of it. These audiences might be international – from the very beginning, written constitutions have been adopted in part to signal capacity to engage on the international plane (Golove and Hulsebosch 2010). Or the audiences may be domestic, consisting of the population that will be subject to the constitution.

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Consider as an example the contemporary constitution of the People's Republic of China, discussed by Xin He in this volume (see Chapter 11). Since 1979, the People's Republic of China has pursued a program based in part on the promise of socialist legality, which is contrasted with the disorder and lawlessness of the Cultural Revolution. The adoption of the 1982 constitution, with its references to legality, was part of this program.

The 1982 constitution is not itself judicially enforceable, and judges who attempted to introduce it as a binding source of legal norms during the 2000s were unsuccessful. As Donald Clarke (2003) once said, the constitution may be the least important document in the Chinese legal system, but this does not imply that it has no political importance. Since 1982, the Chinese Communist Party has amended the document four times, each time to provide signals of ideological legitimacy to particular voices within the party. For example, in 2004, the constitution was modified to include the "Three Represents" theory of Jiang Zemin, including explicit mention of the "advanced productive forces" in society, a euphemism for capitalists. The party of the people now represents the rich too. Such symbolic changes may simply confirm policy developments that have already taken place, but their elevation to the level of the constitution signals their authoritative victory within the ideological debates of the party. The meaning for international audiences is that China is open for business; for domestic audiences, it signals that getting rich is not only glorious, as Deng Xiaoping said, but politically acceptable as well.

Sometimes, of course, the promises in constitutions are not accurate signals of policy, but pure fictions. This *window dressing* role of constitutions,

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aptly captured in the Soviet-era joke at the beginning of the chapter, is one in which the text is designed to obfuscate actual political practice. To use another Chinese example, the constitution promises its citizens' freedom of speech and demonstration (Art. 35), freedom of religion (Art. 36), and the right to criticize the government (Art. 41). But these things are routinely violated in practice. North Korea's constitution may be seen as a pure sham for guaranteeing its citizens "democratic rights and liberties" (Art. 64), though its list of rights is actually relatively limited compared to many other communist texts (see Law and Versteeg, Chapter 8, this volume). The point is that the extensive list of rights found in many totalitarian constitutions is hardly meant to provide for meaningful constraint on the state, or to signal government intents, but is instead a kind of "cheap talk" that adopts the mere language of rights without any corresponding institutions. This may respond to a sense that the constitution needs to *look* complete and to fit in the global scripts that define the basic formal elements, but without risk of costly constraints. Cheap talk is window dressing.[4]

The term "window dressing" might be taken to imply hiding actual practices from external scrutiny. At the margin, it might be that gullible outsiders believe that the practice is actually implemented. But this is unlikely to be effective as a general matter, as Przeworski points out in Chapter 2. Why then do authoritarians put up window dressing? One possibility is that the goal might be not so much to keep outsiders from seeing in, but to keep those inside the country from seeing out. When Stalin included his list of rights in the 1936 constitutional text, he was debasing the very currency of rights and suggesting to his

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information-starved citizenry that rights *everywhere* were meaningless promises.[5] Constitutional window dressing has this two-faced quality.

Dictators may also use the gap between promise and reality to demoralize internal opponents: the false promise is a costly signal of one's intent to crush opponents. We draw here from an idea developed by Peter Rosendorff in the context of the Convention Against Torture, in which accession to the convention is accompanied by an *increase* in the level of torture, at least for certain countries. Rosendorff notes that the accession serves as a costly signal of the intention to repress: the dictator is asserting that he can abuse human rights *even with increased costs* (Hollyer and Rosendorff 2011). One might imagine that this was part of the intention behind Stalin's famous constitution, which inspired jokes like the one at the outset of this chapter. Another way in which authoritarian rulers routinely abuse the gap between constitutional promises and actual practice in order to demoralize would-be opponents is by holding elections but manipulating them excessively and blatantly, even when victory is assured (Simpser 2013). The mere fact, however, that rights are not observed in practice does not mean that the constitution is playing a window-dressing function. Gaps between promises and their actual observance are ubiquitous in law, even in countries that might be considered to be fully operational constitutionalist regimes (see Law and Versteeg, Chapter 8, this volume). This is in part because constitutions also operate as a kind of *blueprint*, describing things not as they are but as they might be. Constitutions are aspirational documents that can serve to motivate people to build a future society.

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Indeed, looking at the long history of rights, one observes that authoritarian regimes may be particularly likely to treat constitutions as blueprints. Mexico's 1917 constitution was particularly innovative with regard to economic and social rights, promising land, education, and labor to the citizenry. These provisions might not have been mere window dressing for a totalitarian party, as might be said of equivalent promises in Stalin's constitution of 1936, but instead could be understood as aspirations. The land reform promises articulated in the Mexican constitution might be understood as a blueprint that influenced land policy over the decades that followed, during which a large proportion of farmland was redistributed. In short, we see that the same type of provision can be a blueprint in one regime and window dressing in another. This highlights that the particular mix of roles – *operating manual, billboard, blueprint,* or *window dressing* – will vary across time and space, and even across different provisions of the same constitution.

Individual provisions within constitutions can play multiple roles. Kristen Stilt's description of constitutional amendments in Egypt (Chapter 6 in this volume) provides a nice example. When Hosni Mubarak was confronted with external pressure to liberalize the Egyptian political system in 2005, he modified the article of the constitution dealing with presidential elections. The new scheme was detailed and complex, providing that nominees could only come from political parties that had been in existence for five years and had 5 percent of the seats in each house of parliament. Only Mubarak's party met the threshold, but other legal parties (which did not include the Muslim Brotherhood) were allowed to nominate candidates for the first election. The provision served as a complex

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operating manual, laying out a scheme that could be followed to the letter while maintaining Mubarak's rule. But it also served as window dressing, providing just enough democratic veneer to forestall further U.S. pressure.

More generally, the literature on competitive or electoral authoritarian regimes – those that hold regular, multiparty elections but on a notoriously uneven playing field – has noted that their democratic-like constitutions may in fact help extend regime survival (Gandhi 2008; Levitsky and Way 2002). Albertus and Menaldo's study in this volume (Chapter 4) argues that constitutions contribute to regime endurance by facilitating the consolidation of political power and the internal coordination of the governing coalition. Constitutional commitments can also facilitate investment and growth, which in turn may extend the lives of regimes. Drawing on large-*n* data on Latin American dictatorships from 1950 to 2002, they find empirical support for the proposition that authoritarian constitutions significantly extend the life expectancy of dictatorships and enhance investment and economic growth.

The categories of operating manuals, billboards, blueprints, and window dressing cover a great deal of terrain, but they do not exhaust the functions of constitutions. The provisions of authoritarian constitutions, for example, can provide resources for the regime's endgame. A paradigmatic example, well documented by Barros (2002), is the Chilean transition, which was laid out in a constitutional document enacted by the military junta in 1988. This called for a plebiscite in 1988, in which General Augusto Pinochet ran alone and lost. But under the terms of the constitution, he remained commander in chief for another ten years, and the military was able to appoint a certain number of "institutional"

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senators. The constitutional framework remained basically intact even after the transition to democracy, lasting until a comprehensive reform in 2005. A contemporary example is provided by ongoing events in Myanmar: while most observers thought that the product of the seventeen-year effort of writing the constitution was a mere fig leaf for continued authoritarian rule, it has provided a modest opening for the return to politics of the National League of Democracy and its charismatic leader Aung San Suu Kyi. The text provides a coordinated and orderly process of inclusion, with the potential to lead to true transformation down the road.

Henry Hale's contribution in this volume (Chapter 10) shows how constitutions matter for politics in hybrid regimes, not simply because of formal institutions, but through their effect on informal political arrangements. He shows how presidentialist constitutions encourage clientelism around a single power structure, whereas semipresidentialist constitutions promote more elite competition. He highlights the downstream effects of these institutional choices in his study of the Ukrainian, Kyrgyz, and Moldovan democratic episodes in the early twenty-first century.

Break

Fundamental Problems of Authoritarian Constitutions: Mechanisms of Efficacy

The study of constitutions in authoritarian regimes must contend with a set of fundamental questions that do not plague democratic constitutions (or do not plague them to the same degree). Our second question is: How do authoritarian constitutions work? More specifically, what is the source of an authoritarian

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constitution's force when the authoritarian ruler is above the law and there is no third-party enforcer? When a judicial enforcement apparatus is in place, constitutional provisions evidently make a difference. Because they will be enforced, they raise the costs to certain activities and lower the costs of others. Not so under authoritarian regimes, where enforcement tends to be at the pleasure of the ruler. Therefore, if one is to argue that authoritarian constitutions matter, it is imperative to delve into the basic mechanisms that grant such constitutions force. Mark Tushnet's contribution to this volume (Chapter 3) wrestles with this issue elegantly, concluding that authoritarian constitutionalism is indeed possible.

We have already suggested various mechanisms underpinning the possibility for authoritarian constitutionalism. One important mechanism is the role of constitutions in *coordination*, which is closely associated with their function as operating manuals. Coordination is a powerful source of constitutional force. Once a self-enforcing system is in place, deviations are costly to any party, even without a formal apparatus of judicial enforcement. Weingast (1997), for example, argues that the cost for a ruler of transgressing the constitution (off the path of play) is popular rebellion. The prior discussion of billboards and window dressing points to a second mechanism behind the force of authoritarian constitutions, namely their *information-related properties*. The role of information in making it possible for authoritarian rulers to credibly commit to future courses of action is well illustrated by Myerson's and Fearon's arguments discussed earlier: by establishing procedures to divulge information that could potentially be used against them, rulers make themselves vulnerable and, in consequence, enhance their credibility. In other cases, authoritarian constitutions

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may serve to obscure information about the true intentions of a ruler or about the actual practices of a regime, as discussed earlier in this chapter. And, as argued previously, constitutions can enable certain kinds of costly signaling that rulers can harness in order to discipline opponents, subordinates, and allies.

Another reason authoritarian constitutions have force is that they can, and often do, function as *hallowed vessels*. The document called "constitution" often enjoys a privileged normative status in the minds of the public, independent of the content of such document. Whether or not judicial enforcement is available, the very idea that a particular proposition is enshrined in the constitution carries normative force in arguments and in behavior. Striking examples of the power of constitutions as hallowed vessels can be found in contemporary dictatorships such as Vietnam and China. Authoritarian constitutions generally call our attention away from the U.S. fetish with judicial enforcement. As Stéphanie Balme and Michael W. Dowdle (2009: 2) point out, "even in the most effective constitutional system, significant aspects of constitutional structure are invariably nonjusticiable." In countries such as Vietnam and China, a vigorous constitutional debate has emerged without a constitutional adjudication system.

In Vietnam, this involves frequent invocation of the constitution by legislative and executive bodies to overturn policies and on the basis of the constitutional rights. For example, in 2003, the Hanoi People's Council tried to limit traffic congestion by issuing a directive limiting people to owning a single motorbike, and the policy was subsequently adopted by the national Ministry of Public Security (Bui 2011). But responding to public pressure, the Law Committee of the National People's Assembly argued that the law violated

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property rights protected by Art. 58 of the constitution. The national prohibition was withdrawn by the Public Security Ministry. Since then, the Ministry of Justice has repeatedly invoked the constitution to oppose policies of other ministries. Constitutional reform is, at this writing, a major issue in Vietnamese politics.

The famous 2003 Sun Zhigang case in China, discussed by Xin He in Chapter 11 in this volume, presents a similar story. Sun was a student in Wuhan who was arrested in Guangzhou for failure to have his registration documents. He was brought into custody in a system known euphemistically as "shelter and repatriation," in which those found outside their location of residency are internally deported back home. Sun, as an educated young man, may have protested his treatment, and he was killed in custody. This led to a national outcry among intellectuals, who argued that the shelter-and-repatriation detention system should be abolished. Legal scholars called it unconstitutional and called for the standing committee of the National People's Congress (which is the only institution with the power of constitutional review in China) to reform the system. These efforts were mooted when the State Council, China's highest executive authority, repealed the system. As in Vietnam, this example evidences a vigorous constitutional politics that occasionally operates in a way that enhances liberty.[6]

Looking at these stories through the lens of legal enforcement would miss the point. In neither the Vietnamese or Chinese case was a government agency formally required to repeal its policies because they were illegal or unconstitutional. But in both cases, the outcome was the same. The mechanism

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for constitutional protection was political, although the language was legal, and the constitution served as a basis for mobilization within inter-elite politics.

A final reason authoritarian constitutions have force is that they can shape social norms and public preferences. As Albert Hirschman put it, "a principal purpose of publically proclaimed laws and regulations is to stigmatize antisocial behavior and thereby to influence citizens' values" (1986 146; see also Sunstein 1993). A monarchical constitution, for example, could potentially buttress the social acceptability of kingly rule, while a constitution that protects free speech might, over time, foster an attitude or norm of tolerance for diversity of opinion. Of course, this need not always be the case: as the idea of constitutions as window dressing suggests, constitutions can also ring hollow to the public, especially when regime practices are sharply at odds with them.

Why Write? Product and Process

The final fundamental question with which the study of authoritarian constitutions must grapple is: Why are constitutions written? Several of the arguments that we have offered thus far are excellent explanations of the *functions* of constitutions understood as sets of rules but are silent about the reasons such rules might be collected in a written document. To underline this point, note that Myerson (2008a) refers to such sets of rules among notables as "personal constitutions," suggesting a distinction from written constitutions. Self-enforcing elite pacts can be informal. Mexican presidents, for example, were for decades chosen by the informal practice of *dedazo*, whereby the outgoing president would handpick his successor. At the same time, presidential term limits were formally coded in the law. Both term limits and the *dedazo* were recognized by the Mexican public as

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the prevailing modus operandi (Langston 2006), and both institutions were uniformly and stably applied over a period of time longer than the lifetime of many constitutions in other countries (Elkins, Ginsburg, and Melton 2009). Nevertheless, term limits were formalized while the *dedazo* was not.

Why then do authoritarian rulers write or retain a constitution? In addressing this question, it is necessary to draw a distinction between the choice to write a constitution (or to retain a preexisting one), on the one hand, and the constitution's function, on the other. We have described a range of possible functions or roles played by constitutions. But can we infer the reasons for the adoption of a constitution on the basis of the constitution's functions? We must at least entertain the possibility that framers might have had as much of a difficult time as contemporary scholars at predicting the downstream effects of adopting a constitution and of particular provisions within it. For one thing, laws, regulations, and formal institutions are known to elicit offsetting behavior (Peltzman 1975). Negretto's study of constitution making by Latin American militaries illustrates the point (see Chapter 5). He argues that militaries choose to write constitutions to facilitate their long-term objectives of political, social, and economic transformation and to enhance their influence over post-transition democratic governments. But crucially, militaries are not always successful in these endeavors, and Negretto argues that the key variable is whether they can mobilize partisan support for their institutional innovations. The point is that dictators, like democrats, do not have perfect foresight as institutional designers.

Another possibility is that sometimes the *process* of writing the constitution serves a political purpose. It allows the regime to be seen as engaged

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in an important project. This seems consistent with the idea that authoritarians, as compared with leaders in democracies, may be more insulated from social forces in choosing the timing and process of constitution making. In the Maldives, for example, the constitution allowed the creation of a special *majlis*, composed of a mix of elected and appointed persons, to undertake the process of constitutional reform. President Maumoon Gayoom, who held office from 1978 to 2008, set up a special *majlis* soon after taking office. The constitution-making project took some seventeen years, leading to a new document that quite clearly enshrined presidential rule in 1998. The process of constitution making was itself a discrete political project with its own logic: it allowed Gayoom a set of governmental positions that facilitated patronage as well as an ability to gain information on new political talent through the electoral process. The point of the process was not necessarily the final product, which could have been produced much more quickly.

The processes of authoritarian constitution making are often hidden to us, and, as Przeworski notes here, this prevents us from understanding the internal conflicts and motives of drafters (see also Barros 2012). No doubt there is more than meets the eye. For example, recent archival research into the drafting and early implementation of the 1936 Soviet constitution has revealed that party officials were organizing contested elections within the constitutional framework, only to reverse themselves in favor of single-party elections just before the 1937 elections (Getty 1991: 29). We can only speculate about the internal decision making, but it seems plausible that the drafters intended that some of the provisions be more than window dressing.

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It also appears that there was an important component of information-gathering in the process, as Moscow demanded that local and party officials initiate broad discussions of the document. Soviet citizens contributed many thousands of comments (as did their Polish counterparts in 1952 in Przeworski's account). Many of the Soviet comments complained about the constitutional guarantee of free social benefits to workers but not peasants (Getty 1991: 24–7). The regime was thus able to gauge what issues were important to the public, even if it chose to ignore them in the final analysis.

We have been implicitly assuming through much of the discussion that the interests of authoritarians are the dominant motives at play. Interests are easy enough to identify through the kind of ex post reconstruction we have been conducting on the basis of the final texts. In some circumstances, however, it seems plausible that authoritarian constitution making will involve a mixture of "reason, passions and interests," as do democratic constitution-making exercises (Elster 1995). While the proportions among these factors may be different across regime type, we should not discount the role of reason and passion.

Reason is analogous to public-regarding constitutional design. We observe it in the examples in which the leader constrains herself, for example, through institutions to protect property rights (in which case there may be a confluence of reason and interest). Passion is also apparent, particularly in constitutional preambles. North Korea's Great leader Comrade Kim II Sung, for example, is "the sun of the nation and the lodestar of the reunification of the fatherland." Constitutional production with such exhortatory language shows also that constitutional production can also be a "consumption activity" for rulers.

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Beyond Shams: The Lessons of Authoritarian Constitutions

We conclude this introduction with some thoughts on the lessons of authoritarian constitutions as well as some open questions that beg further inquiry. The lessons can be divided into those for the study of authoritarian regimes and those for the study of constitutions generally.

The first lesson is that rules matter, even when there is a lot of discretion at the top. No single person rules absolutely, and therefore there is a need for intra-elite coordination, as well as for devices to control subordinates. In some circumstances, constitutions serve to meet these functional needs. Furthermore, *some* authoritarians seek to commit themselves to limit particular courses of action. Tushnet's essay on the normative possibilities of authoritarian constitutionalism (Chapter 3) seems to suggest that this is not only possible but also desirable.

Authoritarian constitutions – and the processes of making them – also provide important clues into regime practices. They structure authoritative discourse and provide a political idiom, whether it be of a "socialist market economy" or blessing the family and civil society (as did Chile's 1980 constitution). By setting the terms of political discourse, constitutions can define what are acceptable as opposed to unacceptable speech acts, legitimating one set and delegitimizing another.

Still, there are many outstanding questions that remain. The large-*n* studies here by Law and Versteeg as well as Elkins, Ginsburg, and Melton begin the project of unpacking the constitutional practices of different subtypes of authoritarians. Law and Versteeg (Chapter 8) examine the different categories

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drawn from the literature in terms of their "sham" quality, or deviation from practice. Elkins, Ginsburg, and Melton (Chapter 7) identify a subcategory of authoritarian constitutions that seem closer to democratic ones in form and that lead to democratic rule. Further case-study exploration will be needed to confirm this finding and to see whether it maps onto the conventional categories in the literature of different types of authoritarian regimes. There is at least the possibility that we might use the constitutional forms to typologize authoritarian regimes and predict which are more favorable toward their citizenry in terms of providing public goods. This project would connect nicely with Tushnet's normative suggestion that certain forms of helpful authoritarian constitutionalism are possible.

Our framework of considering the roles of constitutional provisions as *operating manuals, billboards, blueprints,* and *window dressing* may generalize beyond authoritarian regimes. After all, no constitution is perfectly implemented, and each contains elements of advertising, aspiration, and even obfuscation. Comparing the balances among these functions across regime types may provide further insights and help to generate new typologies.

Finally, there is great utility in longitudinal analysis of constitutional sequences in individual countries. As the highest normative act of the state, constitutions mark an exercise of power and create a historical legacy. We observe that constitutions in dictatorships are often replaced or amended by new leaders who come to power. To understand these documents, one needs to read them in light of the predecessor documents, as the sequence of documents will provide clues over the particular leaders' political concerns and predilections.

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Constitutions have an "afterlife" (Ginsburg 2009). The legacies – of democratic constitutions on authoritarian rulers and of authoritarian constitutions on democratic ones – may shape behavior and idiom long after those who promulgate formal documents are gone.

* * *

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Footnotes

[1] Simpser (2013) points to a different, more perverse side of information flows associated with electoral institutions, whereby a ruler utilizes electoral manipulation in order to appear powerful to the public and enhance his control over allies and rivals.

[2] Thanks to Dan Slater for helping us to crystalize this framework.

[3] With apologies to Adrienne Rich, whose acceptance speech for the 2006 Medal For Distinguished Contribution To American Letters noted that poetry is neither a "blueprint, nor an instruction manual, nor a billboard." See http://www.nationalbook.org/nba2006_dcal_arich.html#.T3fc4qvCWf4. Andras Sajo, however, has noted that the operation of constitutions has poetic qualities (Sajo 2011).

[4] Our usage of the term "cheap talk" differs from its use in game theory. In game theory, cheap talk refers to information that does not directly affect payoffs. Game theoretic cheap talk may nevertheless affect payoffs indirectly – for example, by contributing to coordination.

[5] Thanks to Scott Gehlbach for this point.

[6] In other cases, constitutional politics may be harnessed for the purpose of silencing rivals without subverting formal institutional channels. The intense constitutional politics in contemporary Iran provide a number of examples: The constitutional order features a Guardian Council that uses constitutional power to check candidates for the elected offices in the system, a Supreme Leader with power to control the judiciary, media, and military, and a political system that is often subject to tinkering. Indeed, there is occasional discussion of switching to a parliamentary system to enhance the power of the Supreme Leader.

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Readers with comments may address them to:

Professor Tom Ginsburg
University of Chicago Law School
1111 East 60th Street
Chicago, IL 60637
tginsburg@uchicago.edu

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